

STATE OF MICHIGAN
COURT OF APPEALS

U-WASH INCORPORATED,

Petitioner-Appellant,

v

TOWNSHIP OF ROYAL OAK,

Respondent-Appellee.

UNPUBLISHED
February 22, 2007

No. 266048
Tax Tribunal
LC No. 00-291091

Before: O’Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

In this action involving the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, petitioner appeals as of right an order of the Michigan Tax Tribunal (MTT) denying its challenge to respondent’s valuation of its personal property. We reverse and remand.

Petitioner owns car wash equipment located in respondent’s taxing jurisdiction. It acquired this equipment used for \$16,786. Petitioner filed personal property statements (PPS) with respondent for the 2000 through 2003 tax years. In each year, petitioner valued the property at its acquisition cost. Using State Tax Commission (STC) multipliers, petitioner reported the true cash value (TCV) of the property on its 2001 PPS at \$12,758, and on its 2002 PPS at \$11,247. Respondent accepted petitioner’s 2001 PPS and calculated the taxable value (TV) of the property at \$6,370, assessing this amount. After conducting an audit of the property, respondent rejected petitioner’s 2002 PPS. It recalculated the TCV of petitioner’s property at \$100,000 and its TV at \$50,000; respondent then assessed the latter amount. Petitioner appealed the assessment to respondent’s board of review, and then to the MTT, both of which rejected its challenge.

Petitioner argues that the MTT erred in rejecting its challenge to respondent’s assessment under Const 1963, art 9, § 3. We agree. We review constitutional and statutory interpretation questions *de novo*. *Ayar v Foodland Distributors*, 472 Mich 713, 715; 698 NW2d 875 (2005); *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999).

Const 1963, art 9, § 3 requires the Legislature to limit annual increases in the taxable value of property by not “more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.” MCL 211.27a(2) accordingly provides that for taxes

levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

The primary goal of statutory interpretation is to ascertain and give effect to legislative intent. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). We enforce clear and unambiguous statutory language as written. *Ayar, supra* at 716.

We conclude that under the unambiguous language of MCL 211.27a(2), respondent impermissibly increased the taxable value of petitioner's property beyond the factor of 1.05 percent of \$6,370. Petitioner's 2001 PPS reported the TCV of the equipment as \$12,758 (petitioner's acquisition cost of \$16,786 depreciated according to STC multipliers). Respondent assessed petitioner's property accordingly, calculating its taxable value at \$6,370. See MCL 211.27a(1). Respondent subsequently rejected petitioner's 2002 PPS and calculated the property's taxable value at \$50,000, based on the audited TCV of \$100,000. This increased the taxable value of petitioner's property by nearly 750 percent, in plain violation of Const 1963, art 9, § 3 and MCL 211.27a(2). *Ayar, supra* at 716.

Although not germane to our resolution of this appeal, we note that the parties also disputed the valuation of the equipment before the MTT, and the MTT issued an opinion determining the property's TCV. Responding to petitioner's challenge to the constitutionality of respondent's uncapping, the MTT reasoned that although it lacked authority to alter the taxable value relating to the 2001 assessment, it "rectified" petitioner's 2002 PPS filing through its determination of the property's TCV and resulting taxable value. This determination was in error. The MTT expressly acknowledged that it lacked jurisdiction over the 2001 assessment. This was the "taxable value in the immediately preceding year" for the 2002 assessment. MCL 211.27a(2). The MTT was therefore proscribed from increasing the taxable value of respondent's property beyond the statutory limitation. Its reasoning otherwise constituted an error in applying the law. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

Respondent argues that MCL 211.154 authorized the MTT's actions. We disagree. MCL 211.154 authorizes the State Tax Commission (STC) to correct an assessment where property is "incorrectly reported or omitted." MCL 211.154(1). This section has been held to govern where "property thought to be taxable has been incorrectly reported or omitted." *Gen Motors Corp v State Tax Comm*, 200 Mich App 117, 120; 504 NW2d 10 (1993); see also *Detroit v Norman Allen & Co*, 107 Mich App 186, 191-192; 309 NW2d 198 (1981). That is, MCL 211.154 applies where the taxable status of the property is disputed. *Norman Allen, supra* at 191-192. The property at issue is concededly subject to personal property taxation. MCL 211.8. It was reported by petitioner and assessed by respondent. Indeed, respondent filed an omitted property appeal with the STC during the course of these proceedings, which the STC rejected. This

dispute fundamentally concerns the valuation of petitioner's property for assessment purposes. The taxable status of the equipment is not in question. And petitioner did not fail to report the equipment on its personal property statements.

We note that petitioner erroneously reported its acquisition cost for the equipment on its personal property statements. The STC promulgates personal property statement forms, which taxpayers are required to submit and local assessors may utilize in assessing personal property. MCL 211.19(2), (4). These statements “are not binding upon the assessors, and are for the purpose of assisting these officers in making a proper and fair assessment of the property.” *Ford Motor Co, supra* at 445 (internal citation omitted). The statements employ STC multipliers to approximate depreciation of reported property. STC multipliers “are mass appraisal tools used as guides by local assessors to value” personal property. *Wayne Co v State Tax Comm*, 261 Mich App 174, 177; 682 NW2d 100 (2004). The acquisition “cost new” in the year of acquisition is reported on the PPS and a multiplier is applied to arrive at the property's TCV. By reporting its “used” acquisition cost, petitioner potentially undervalued the equipment.

However, when respondent levied the assessment, it was left without recourse to subsequently challenge it on the grounds that it undervalued the property. Respondent's assessor had an independent statutory duty “to ascertain the taxable property in his jurisdiction and to exercise his best judgment when making an assessment.” *Ford Motor Co, supra* at 445. Although respondent certainly had recourse to challenge other errors, it enjoyed no statutory authority to challenge its own valuation of petitioner's property. This is confirmed by a recent amendment to MCL 211.53b, which authorizes local assessors to challenge errors “made by the taxpayer in preparing the statement of assessable personal property” for determinations occurring between 2006 and 2009. MCL 211.53b(1), (7)(d)(iv), as amended by 2006 PA 13.

Because of our resolution of the foregoing, we decline to address petitioner's remaining arguments on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Michael J. Talbot